

1 AN ACT relating to fiduciary duties.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 61.645 is amended to read as follows:

- 4 (1) The County Employees Retirement System, Kentucky Employees Retirement  
5 System, and State Police Retirement System shall be administered by the board of  
6 trustees of the Kentucky Retirement Systems composed of seventeen (17) members,  
7 who shall be selected as follows:
- 8 (a) The secretary of the Personnel Cabinet shall serve as trustee for as long as he  
9 occupies the position of secretary under KRS 18A.015, except as provided  
10 under subsections (5) and (6) of this section;
- 11 (b) Three (3) trustees, who shall be members or retired from the County  
12 Employees Retirement System, elected by the members and retired members  
13 of the County Employees Retirement System;
- 14 (c) One (1) trustee, who shall be a member or retired from the State Police  
15 Retirement System, elected by the members and retired members of the State  
16 Police Retirement System;
- 17 (d) Two (2) trustees, who shall be members or retired from the Kentucky  
18 Employees Retirement System, elected by the members and retired members  
19 of the Kentucky Employees Retirement System; and
- 20 (e) Ten (10) trustees, appointed by the Governor of the Commonwealth, subject  
21 to Senate confirmation in accordance with KRS 11.160 for each appointment  
22 or reappointment. Of the ten (10) trustees appointed by the Governor:
- 23 1. One (1) trustee shall be knowledgeable about the impact of pension  
24 requirements on local governments;
- 25 2. One (1) trustee shall be appointed from a list of three (3) applicants  
26 submitted by the Kentucky League of Cities;
- 27 3. One (1) trustee shall be appointed from a list of three (3) applicants

- 1 submitted by the Kentucky Association of Counties;
- 2 4. One (1) trustee shall be appointed from a list of three (3) applicants
- 3 submitted by the Kentucky School Boards Association; and
- 4 5. Six (6) trustees shall have investment experience. For purposes of this
- 5 subparagraph, a trustee with "investment experience" means an
- 6 individual who does not have a conflict of interest, as provided by KRS
- 7 61.655, and who has at least ten (10) years of experience in one (1) of
- 8 the following areas of expertise:
- 9 a. A portfolio manager acting in a fiduciary capacity;
- 10 b. A professional securities analyst or investment consultant;
- 11 c. A current or retired employee or principal of a trust institution,
- 12 investment or finance organization, or endowment fund acting in
- 13 an investment-related capacity;
- 14 d. A chartered financial analyst in good standing as determined by the
- 15 CFA Institute; or
- 16 e. A university professor, teaching investment-related studies.
- 17 (2) The board is hereby granted the powers and privileges of a corporation, including
- 18 but not limited to the following powers:
- 19 (a) To sue and be sued in its corporate name;
- 20 (b) To make bylaws not inconsistent with the law;
- 21 (c) To conduct the business and promote the purposes for which it was formed;
- 22 (d) Except as provided in KRS 61.650(6), to contract for investment counseling,
- 23 actuarial, auditing, medical, and other professional or technical services as
- 24 required to carry out the obligations of the board subject to KRS Chapters 45,
- 25 45A, 56, and 57;
- 26 (e) To purchase fiduciary liability insurance;
- 27 (f) Except as provided in KRS 61.650(6), to acquire, hold, sell, dispose of,

1 pledge, lease, or mortgage, the goods or property necessary to exercise the  
2 board's powers and perform the board's duties subject to KRS Chapters 45,  
3 45A, and 56; and

4 (g) The board shall reimburse any trustee, officer, or employee for any legal  
5 expense resulting from a civil action arising out of the performance of his or  
6 her official duties. The hourly rate of reimbursement for any contract for legal  
7 services under this paragraph shall not exceed the maximum hourly rate  
8 provided in the Legal Services Duties and Maximum Rate Schedule  
9 promulgated by the Government Contract Review Committee established  
10 pursuant to KRS 45A.705, unless a higher rate is specifically approved by the  
11 secretary of the Finance and Administration Cabinet or his or her designee.

12 (3) (a) Notwithstanding the provisions of subsection (1) of this section, each trustee  
13 shall serve a term of four (4) years or until his or her successor is duly  
14 qualified except as otherwise provided in this section. An elected trustee or a  
15 trustee appointed by the Governor under subsection (1)(e) of this section, shall  
16 not serve more than three (3) consecutive four (4) year terms. An elected  
17 trustee or a trustee appointed by the Governor under subsection (1)(e) of this  
18 section, who has served three (3) consecutive terms may be elected or  
19 appointed again after an absence of four (4) years from the board.

20 (b) The term limits established by paragraph (a) of this subsection shall apply to  
21 trustees serving on or after July 1, 2012, and all terms of office served prior to  
22 July 1, 2012, shall be used to determine if the trustee has exceeded the term  
23 limits provided by paragraph (a) of this subsection.

24 (4) (a) The trustees selected by the membership of each of the various retirement  
25 systems shall be elected by ballot. For each trustee to be elected, the board  
26 may nominate, not less than six (6) months before a term of office of a trustee  
27 is due to expire, three (3) constitutionally eligible individuals.

- 1 (b) Individuals may be nominated by the retirement system members which are to  
2 elect the trustee by presenting to the executive director, not less than four (4)  
3 months before a term of office of a trustee is due to expire, a petition, bearing  
4 the name, last four digits of the Social Security number, and signature of no  
5 less than one-tenth (1/10) of the number voting in the last election by the  
6 retirement system members.
- 7 (c) Within four (4) months of the nominations made in accordance with  
8 paragraphs (a) and (b) of this subsection, the executive director shall cause to  
9 be prepared an official ballot. The ballot shall include the name, address, and  
10 position title of each individual nominated by the board and by petition.  
11 Provisions shall also be made for write-in votes.
- 12 (d) Except as provided by paragraph (j) of this subsection, the ballots shall be  
13 distributed to the eligible voters by mail to their last known residence address.
- 14 (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of  
15 a predetermined box number at a United States Post Office located within  
16 Kentucky or submitted electronically as provided by paragraph (j) of this  
17 subsection. Access to this post office box shall be limited to the board's  
18 contracted auditing firm. The individual receiving a plurality of votes shall be  
19 declared elected.
- 20 (f) The eligible voter shall cast his or her ballot by checking a square opposite  
21 the name of the candidate of his or her choice. He or she shall sign and mail  
22 the ballot or submit the electronic ballot at least thirty (30) days prior to the  
23 date the term to be filled is due to expire. The latest mailing date, or date of  
24 submission in the case of electronic ballots, shall be provided on the ballot.
- 25 (g) The board's contracted auditing firm shall report in writing the outcome to the  
26 chair of the board of trustees. Cost of an election shall be payable from the  
27 funds of the system for which the trustee is elected.

- 1 (h) For purposes of this subsection, an eligible voter shall be a person who was a  
2 member of the retirement system on December 31 of the year preceding the  
3 election year.
- 4 (i) Each individual who submits a request to be nominated by the board under  
5 paragraph (a) of this subsection and each individual who is nominated by the  
6 membership under paragraph (b) of this subsection shall:
- 7 1. Complete an application developed by the retirement systems which  
8 shall include but not be limited to a disclosure of any prior felonies and  
9 any conflicts of interest that would hinder the individual's ability to  
10 serve on the board;
  - 11 2. Submit a resume detailing the individual's education and employment  
12 history and a cover letter detailing the member's qualifications for  
13 serving as trustee to the board; and
  - 14 3. Authorize the systems to have a criminal background check performed.  
15 The criminal background check shall be performed by the Department of  
16 Kentucky State Police.
- 17 (j) In lieu of the ballots mailed to members and retired members as provided by  
18 this subsection, the systems may by promulgation of administrative regulation  
19 pursuant to KRS Chapter 13A conduct trustee elections using electronic  
20 ballots, except that the systems shall mail a paper ballot upon request of any  
21 eligible voter.
- 22 (5) Any vacancy which may occur in an appointed position shall be filled in the same  
23 manner which provides for the selection of the particular trustee, and any vacancy  
24 which may occur in an elected position shall be filled by appointment by a majority  
25 vote of the remaining elected trustees with a person selected from the system in  
26 which the vacancy occurs, and if the secretary of the Personnel Cabinet resigns his  
27 or her position as trustee, it shall be filled by appointment made by the Governor;

1           however, any vacancy shall be filled only for the duration of the unexpired term. In  
2           the event of a vacancy of an elected trustee, Kentucky Retirement Systems shall  
3           notify members of the system in which the vacancy occurs of the vacancy and the  
4           opportunity to be considered for the vacant position. Any vacancy shall be filled  
5           within ninety (90) days of the position becoming vacant.

- 6       (6)   (a)   Membership on the board of trustees shall not be incompatible with any other  
7           office unless a constitutional incompatibility exists. No trustee shall serve in  
8           more than one (1) position as trustee on the board; and if a trustee holds more  
9           than one (1) position as trustee on the board, he *or she* shall resign a position.
- 10       (b)   A trustee shall be removed from office upon conviction of a felony or for a  
11           finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court  
12           of competent jurisdiction.
- 13       (c)   A current or former employee of Kentucky Retirement Systems shall not be  
14           eligible to serve as a member of the board.
- 15       (7)   Trustees who do not otherwise receive a salary from the State Treasury shall receive  
16           a per diem of eighty dollars (\$80) for each day they are in session or on official  
17           duty, and they shall be reimbursed for their actual and necessary expenses in  
18           accordance with state administrative regulations and standards.
- 19       (8)   (a)   The board shall meet at least once in each quarter of the year and may meet in  
20           special session upon the call of the chair or the executive director.
- 21       (b)   The board shall elect a chair and a vice chair. The chair shall not serve more  
22           than four (4) consecutive years as chair or vice-chair of the board. The vice-  
23           chair shall not serve more than four (4) consecutive years as chair or vice-  
24           chair of the board. A trustee who has served four (4) consecutive years as  
25           chair or vice-chair of the board may be elected chair or vice-chair of the board  
26           after an absence of two (2) years from the positions.
- 27       (c)   A majority of the trustees shall constitute a quorum and all actions taken by

1 the board shall be by affirmative vote of a majority of the trustees present.

2 (9) (a) The board of trustees shall appoint or contract for the services of an executive  
3 director and fix the compensation and other terms of employment for this  
4 position without limitation of the provisions of KRS Chapters 18A and KRS  
5 64.640. The executive director shall be the chief administrative officer of the  
6 board.

7 (b) The board of trustees shall authorize the executive director to appoint the  
8 employees deemed necessary to transact the business of the system. All  
9 employees of the systems, except for the executive director, shall be subject to  
10 the state personnel system established pursuant to KRS 18A.005 to 18A.204  
11 and shall have their salaries determined by the secretary of the Personnel  
12 Cabinet.

13 (c) The board shall require the executive director and the employees as it thinks  
14 proper to execute bonds for the faithful performance of their duties  
15 notwithstanding the limitations of KRS Chapter 62.

16 (d) The board shall establish a system of accounting.

17 (e) The board shall do all things, take all actions, and promulgate all  
18 administrative regulations, not inconsistent with the provisions of KRS 16.505  
19 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, necessary or proper in  
20 order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705,  
21 and 78.510 to 78.852. Notwithstanding any other evidence of legislative  
22 intent, it is hereby declared to be the controlling legislative intent that the  
23 provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852  
24 conform with federal statute or regulation and meet the qualification  
25 requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and  
26 other published guidance. Provisions of KRS 16.505 to 16.652, 61.510 to  
27 61.705, and 78.510 to 78.852 which conflict with federal statute or regulation

1 or qualification under 26 U.S.C. sec. 401(a), applicable federal regulations,  
2 and other published guidance shall not be available. The board shall have the  
3 authority to promulgate administrative regulations to conform with federal  
4 statute and regulation and to meet the qualification requirements under 26  
5 U.S.C. sec. 401(a), including an administrative regulation to comply with 26  
6 U.S.C. sec. 401(a)(9).

7 (10) Notwithstanding any statute to the contrary, employees shall not be considered  
8 legislative agents under KRS 6.611.

9 (11) The Attorney General, or an assistant designated by him or her, may attend each  
10 meeting of the board and may receive the agenda, board minutes, and other  
11 information distributed to trustees of the board upon request. The Attorney General  
12 may act as legal adviser and attorney for the board, and the board may contract for  
13 legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.

14 (12) (a) The system shall publish an annual financial report showing all receipts,  
15 disbursements, assets, and liabilities. The annual report shall include a copy of  
16 an audit conducted in accordance with generally accepted auditing standards.  
17 Except as provided by paragraph (b) of this subsection, the board may select  
18 an independent certified public accountant or the Auditor of Public Accounts  
19 to perform the audit. If the audit is performed by an independent certified  
20 public accountant, the Auditor of Public Accounts shall not be required to  
21 perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at  
22 his or her discretion. All proceedings and records of the board shall be open  
23 for inspection by the public. The system shall make copies of the audit  
24 required by this subsection available for examination by any member, retiree,  
25 or beneficiary in the office of the executive director of the Kentucky  
26 Retirement Systems and in other places as necessary to make the audit  
27 available to all members, retirees, and beneficiaries. A copy of the annual

1           audit shall be sent to the Legislative Research Commission no later than ten  
2           (10) days after receipt by the board.

3           (b) At least once every five (5) years, the Auditor of Public Accounts shall  
4           perform the audit described by this subsection, and the system shall reimburse  
5           the Auditor of Public Accounts for all costs of the audit. The Auditor of  
6           Public Accounts shall determine which fiscal year during the five (5) year  
7           period the audit prescribed by this paragraph will be completed.

8           (13) All expenses incurred by or on behalf of the system and the board in the  
9           administration of the system during a fiscal year shall be paid from the retirement  
10          allowance account. Any other statute to the contrary notwithstanding, authorization  
11          for all expenditures relating to the administrative operations of the system shall be  
12          contained in the biennial budget unit request, branch budget recommendation, and  
13          the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.

14          (14) Any person adversely affected by a decision of the board, except as provided under  
15          subsection (16) of this section or KRS 61.665, involving KRS 16.505 to 16.652,  
16          61.510 to 61.705, and 78.510 to 78.852, may appeal the decision of the board to the  
17          Franklin Circuit Court within sixty (60) days of the board action.

18          (15) (a) A trustee shall discharge his or her duties as a trustee, including his or her  
19          duties as a member of a committee:

- 20               1. In good faith;
- 21               2. On an informed basis; and
- 22               3. In a manner he or she honestly believes to be in the best interest of the  
23               Kentucky Retirement Systems.

24          (b) A trustee discharges his or her duties on an informed basis if, when he or she  
25          makes an inquiry into the business and affairs of the Kentucky Retirement  
26          Systems or into a particular action to be taken or decision to be made, he or  
27          she exercises the care an ordinary prudent person in a like position would

1 exercise under similar circumstances.

2 (c) In discharging his or her duties, a trustee may rely on information, opinions,  
3 reports, or statements, including financial statements and other financial data,  
4 if prepared or presented by:

5 1. One (1) or more officers or employees of the Kentucky Retirement  
6 Systems whom the trustee honestly believes to be reliable and competent  
7 in the matters presented;

8 2. Legal counsel, public accountants, actuaries, or other persons as to  
9 matters the trustee honestly believes are within the person's professional  
10 or expert competence; or

11 3. A committee of the board of trustees of which he or she is not a member  
12 if the trustee honestly believes the committee merits confidence.

13 (d) A trustee shall not be considered as acting in good faith if he or she has  
14 knowledge concerning the matter in question that makes reliance otherwise  
15 permitted by paragraph (c) of this subsection unwarranted.

16 (e) Any action taken as a trustee, or any failure to take any action as a trustee,  
17 shall not be the basis for monetary damages or injunctive relief unless:

18 1. The trustee has breached or failed to perform the duties of the trustee's  
19 office in compliance with this section; and

20 2. In the case of an action for monetary damages, the breach or failure to  
21 perform constitutes willful misconduct or wanton or reckless disregard  
22 for human rights, safety, or property.

23 (f) A person bringing an action for monetary damages under this section shall  
24 have the burden of proving by clear and convincing evidence the provisions of  
25 paragraph (e)1. and 2. of this subsection, and the burden of proving that the  
26 breach or failure to perform was the legal cause of damages suffered by the  
27 Kentucky Retirement Systems.

- 1 (g) Nothing in this section shall eliminate or limit the liability of any trustee for  
2 any act or omission occurring prior to July 15, 1988.
- 3 (h) In discharging his or her administrative duties under this section, a trustee  
4 shall strive to administer the retirement system in an efficient and cost-  
5 effective manner for the taxpayers of the Commonwealth of Kentucky.
- 6 (16) When an order by the system substantially impairs the benefits or rights of a  
7 member, retired member, or recipient, except action which relates to entitlement to  
8 disability benefits, or when an employer disagrees with an order of the system as  
9 provided by KRS 61.598, the affected member, retired member, recipient, or  
10 employer may request a hearing to be held in accordance with KRS Chapter 13B.  
11 The board may establish an appeals committee whose members shall be appointed  
12 by the chair and who shall have authority to act upon the recommendations and  
13 reports of the hearing officer on behalf of the board. The member, retired member,  
14 recipient, or employer aggrieved by a final order of the board following the hearing  
15 may appeal the decision to the Franklin Circuit Court, in accordance with KRS  
16 Chapter 13B.
- 17 (17) The board shall give the Kentucky Education Support Personnel Association  
18 twenty-four (24) hours notice of the board meetings, to the extent possible.
- 19 (18) The board shall establish a formal trustee education program for all trustees of the  
20 board. The program shall include but not be limited to the following:
- 21 (a) A required orientation program for all new trustees elected or appointed to the  
22 board. The orientation program shall include training on:
- 23 1. Benefits and benefits administration;
  - 24 2. Investment concepts, policies, and current composition and  
25 administration of retirement systems investments;
  - 26 3. Laws, bylaws, and administrative regulations pertaining to the  
27 retirement systems and to fiduciaries; and

1           4. Actuarial and financial concepts pertaining to the retirement systems.

2           If a trustee fails to complete the orientation program within one (1) year from  
3           the beginning of his or her first term on the board, the retirement systems shall  
4           withhold payment of the per diem and travel expenses due to the board  
5           member under this section and KRS 16.640 and 78.780 until the trustee has  
6           completed the orientation program;

7           (b) Annual required training for board members on the administration, benefits,  
8           financing, and investing of the retirement systems. If a trustee fails to  
9           complete the annual required training during the calendar or fiscal year, the  
10          retirement systems shall withhold payment of the per diem and travel  
11          expenses due to the board member under this section and KRS 16.640 and  
12          78.780 until the board member has met the annual training requirements; and

13          (c) The retirement systems shall incorporate by reference in an administrative  
14          regulation, pursuant to KRS 13A.2251, the trustee education program.

15       (19) In order to improve public transparency regarding the administration of the systems,  
16          the board of trustees shall adopt a best practices model by posting the following  
17          information to the retirement systems' Web site and shall make available to the  
18          public:

19          (a) Meeting notices and agendas for all meetings of the board. Notices and  
20          agendas shall be posted to the retirement systems' Web site at least seventy-  
21          two (72) hours in advance of the board or committee meetings, except in the  
22          case of special or emergency meetings as provided by KRS 61.823;

23          (b) The Comprehensive Annual Financial Report with the information as follows:  
24               1. A general overview and update on the retirement systems by the  
25                executive director;  
26               2. A listing of the board of trustees;  
27               3. A listing of key staff;

- 1           4.    An organizational chart;
- 2           5.    Financial information, including a statement of plan net assets, a  
3           statement of changes in plan net assets, an actuarial value of assets, a  
4           schedule of investments, a statement of funded status and funding  
5           progress, and other supporting data;
- 6           6.    Investment information, including a general overview, a list of the  
7           retirement system's professional consultants, a total net of fees return on  
8           retirement systems investments over a historical period, an investment  
9           summary, contracted investment management expenses, transaction  
10          commissions, and a schedule of investments;
- 11          7.    The annual actuarial valuation report on the pension benefit and the  
12          medical insurance benefit; and
- 13          8.    A general statistical section, including information on contributions,  
14          benefit payouts, and retirement systems' demographic data;
- 15       (c)   All external audits;
- 16       (d)   All board minutes or other materials that require adoption or ratification by  
17          the board of trustees. The items listed in this paragraph shall be posted within  
18          seventy-two (72) hours of adoption or ratification of the board;
- 19       (e)   All bylaws, policies, or procedures adopted or ratified by the board of trustees;
- 20       (f)   The retirement systems' summary plan description;
- 21       (g)   A document containing an unofficial copy of the statutes governing the  
22          systems administered by Kentucky Retirement Systems;
- 23       (h)   A listing of the members of the board of trustees and membership on each  
24          committee established by the board, including any investment committees;
- 25       (i)   All investment holdings in aggregate, fees, and commissions for each fund  
26          administered by the board, which shall be updated on a quarterly basis for  
27          fiscal years beginning on or after July 1, 2017. The systems shall request from

1 all managers, partnerships, and any other available sources all information  
2 regarding fees and commissions and shall, based on the requested information  
3 received:

- 4 1. Disclose the dollar value of fees and commissions paid to each  
5 individual manager or partnership;
- 6 2. Disclose the dollar value of any profit sharing, carried interest, or any  
7 other partnership incentive arrangements, partnership agreements, or any  
8 other partnership expenses received by or paid to each manager or  
9 partnership; and
- 10 3. As applicable, report each fee or commission by manager or partnership  
11 consistent with standards established by the Institutional Limited  
12 Partners Association (ILPA).

13 In addition to the requirements of this paragraph, the systems shall also  
14 disclose the name and address of all individual underlying managers or  
15 partners in any fund of funds in which system assets are invested;

16 (j) An update of net of fees investment returns, asset allocations, and the  
17 performance of the funds against benchmarks adopted by the board for each  
18 fund, for each asset class administered by the board, and for each manager.  
19 The update shall be posted on a quarterly basis for fiscal years beginning on or  
20 after July 1, 2017;

21 (k) A searchable database of the systems' expenditures and a listing of each  
22 individual employed by the systems along with the employee's salary or  
23 wages. In lieu of posting the information required by this paragraph to the  
24 systems' Web site, the systems may provide the information through a Web  
25 site established by the executive branch to inform the public about executive  
26 branch agency expenditures and public employee salaries and wages;

27 (l) All contracts or offering documents for services, goods, or property purchased

1           or utilized by the systems; and

2           (m) Information regarding the systems' financial and actuarial condition that is  
3           easily understood by the members, retired members, and the public.

4 (20) Notwithstanding the requirements of subsection (19) of this section, the retirement  
5           systems shall not be required to furnish information that is protected under KRS  
6           61.661, exempt under KRS 61.878, or that, if disclosed, would compromise the  
7           retirement systems' ability to competitively invest in real estate or other asset  
8           classes, except that no provision of this section or KRS 61.878 shall exclude  
9           disclosure and review of all contracts, including investment contracts, by the board,  
10          the Auditor of Public Accounts, and the Government Contract Review Committee  
11          established pursuant to KRS 45A.705 or the disclosure of investment fees and  
12          commissions as provided by this section. If any public record contains material  
13          which is not excepted under this section, the systems shall separate the excepted  
14          material by removal, segregation, or redaction, and make the nonexcepted material  
15          available for examination.

16 (21) Notwithstanding any other provision of KRS 16.505 to 16.652, 61.510 to 61.705,  
17          and 78.510 to 78.852 to the contrary, no funds of the systems administered by  
18          Kentucky Retirement Systems, including fees and commissions paid to an  
19          investment manager, private fund, or company issuing securities, who manages  
20          systems assets, shall be used to pay fees and commissions to placement agents. For  
21          purposes of this subsection, "placement agent" means a third-party individual, who  
22          is not an employee, or firm, wholly or partially owned by the entity being hired,  
23          who solicits investments on behalf of an investment manager, private fund, or  
24          company issuing securities.